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IN THE

Supreme Court of The United States

No. [redacted] 161

MELVIN LEE ROSS,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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IN THE

Supreme Court of The United States

No. ..

MELVIN LEE ROSS,
Petitioner,

Versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Melvin Lee Ross, your Petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case on April 15, 1970.

OPINIONS BELOW

There was no formal opinion of the District Court. The opinion of the Court of Appeals has not yet been reported. It is reproduced in Appendix A to this Petition.

JURISDICTION

The judgment of the Court of Appeals was entered on April 15, 1970. This Court's jurisdiction is invoked under 28 U. S. Code, Sec. 1254(1), 28 U. S. Code, Sec. 1651 and 28 U. S. Code, Sec. 2106.

QUESTIONS PRESENTED

I

Whether the Trial Court committed error in holding sufficient the search warrant and its supporting affidavit, and in denying Defendant's Motion to Suppress Evidence seized by virtue thereof.

II

Whether the Defendant was denied due process of law by the prosecution's suppression of a witness whose testimony may have been exculpatory to the Defendant.

III

Whether there was sufficient evidence to convict the Defendant under 18 U. S. Code 2315.

STATUTE INVOLVED

The statute involved in this appeal is Section 2315, Title 18, U. S. Code, which, in its pertinent parts, reads as follows:

"SALE OR RECEIPT OF STOLEN GOODS, SECURITIES,

MONEYS, OR FRAUDULENT STATE TAX STAMPS

"Whoever receives, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of Five Thousand ($5,000.00) Dollars, or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of Five Hundred ($500.00) Dollars or more, moving as, or which are

a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen, unlawfully converted, or taken;

* * * * *

"Shall be fined not more than Ten Thousand ($10,000.00) Dollars or imprisoned not more than ten (10) years, or both.".

STATEMENT

The Petitioner was tried in the United States District Court for South Carolina, Greenville Division, upon a two count indictment charging two violations of Section 2315, Title 18, United States Code, in that the Petitioner did conceal and store certain goods of the value of Five Thousand ($5,000.00) Dollars or more, which were in interstate commerce, knowing the same to have been stolen. Trial was held before a jury which returned a verdict of guilty on both counts. The sentence of the Court committed the Petitioner to the custody of the Attorney General for a period of six (6) years, on each count, these sentences to run concurrently.

The Petitioner lived with his wife and three children on a forty-one (41) acre tract of land bordering United States Highway No. 29, between Greenville and Spartanburg, South Carolina. There he operated a garage and junk yard and raised cattle.

In the late Summer of 1967 he contracted with one Ray Payne to make excavations for and install a giant baling press for crushing used cars into scrap metal. Petitioner himself then made a series of trips to Boston, Massachusetts, dismantling and removing the baling press, piece by piece, making seven such trips in all, each trip lasting from ten (10) days to two (2) weeks. Payne, in the meantime, moved into a house trailer on the Petitioner's premises and began excavating, using his own labor and equipment. This continued throughout the Fall and Winter of 1967 - 1968. Just before Christmas of 1967 Payne left, ostensibly because it was getting too cold to go on with the work. He has never been found since. Petitioner

continued his work, expecting Payne to return in the Spring to finish the job.

On March 29, 1968, F.B.I. Agents came to the Petitioner's home, with a search warrant, searched the premises and found buried under the ground on the Petitioner's land a large trailer-truck and certain other property alleged to have been stolen from interstate commerce some seven (7) months earlier. The Petitioner denied any knowledge of the presence of the contraband property, and assisted the Agents in unearthing and returning the property. The Petitioner was then charged with knowingly storing and concealing stolen goods in interstate commerce of the value of Five Thousand ($5,000.00) Dollars or more, in violation of Section 2315, Title 18, United States Code.

The Government's case against the Petitioner rested on two premises: (1) That the property had disappeared in interstate commerce in September of 1967, and (2) That the property was found buried on the Petitioner's land some six (6) months later. No direct evidence was offered to show that the property was stolen, nor that the Petitioner had stolen it, nor that he had buried it, nor that he knew it was there. Nor was the value of the property convincingly established, even as of the time of its disappearance in September of 1967, much less six (6) months later when it was found on the Petitioner's land. These vital elements of the crime charged were left to surmise and conjecture. The Petitioner's case in defense, although corroborated, was uncontroverted. No attempt was made by the prosecution to explain or account for the missing Ray Payne and his excavation work on the Petitioner's premises. Yet, the prosecution was allowed to smugly conceal its "confidential source", who had furnished the tip which led to the finding of the buried property.

Petitioner's motions to suppress the affidavit and search warrant were denied at trial and pre-trial by the District Court, and on appeal by the Fourth Circuit Court.

REASONS FOR GRANTING THE WRIT

I

With regard to the affidavit and search warrant, the novel question presented here is a variation of the problem dealt with in *Aquilar v. Texas*, 378 U. S. 108; 84 S. Ct. 1509; 12 L. Ed. 2d 723 (1964), and further construed by *Spinelli v. United States*, 393 U. S. 410; 89 S. Ct. 584; 21 L. Ed. 2d 637 (1969). The affidavit stated that "a confidential source of known and proven reliability" advised the affiant that a tractor-trailer loaded with Armstrong floor covering was buried on the Petitioner's property off U. S. Highway No. 29 in Spartanburg County, South Carolina. The affidavit then recited that the source was reliable because "the source had in the past provided affiant with correct information as to (1) the theft of a stolen motor vehicle transported in interstate commerce, and (2) the theft of another trailer and contents from interstate commerce." "*Aquilar's* other test," as *Spinelli* called it, 393 U. S. at 416, however, was not met. The Circuit Court admitted that "the affidavit did not relate how the source received his information, and thus, if the affidavit rested on the tip alone we could not sustain the search." However, the Court said, the tip did not stand by itself, but was supplemented in two important respects which cured the defect. In the first place, the Court said, the Agent demonstrated detailed knowledge that a crime had actually been committed, providing the approximate date, place, serial number, license number and contents of the trailer. And, the fact that the trailer had been stolen, the Court said, was established beyond doubt, and clearly derived from an independent source. This, the Court reasoned, contrasted with *Aquilar* and *Spinelli* in which the officers relied on informants not only for the identity of the culprit, but to indicate even the existence of criminal activity. It is respectfully submitted that this was a patently erroneous conclusion by the Court. The affidavit did recite that a trailer-truck had been stolen from interstate transit on or about September 30, 1967; but the trailer subsequently found on the Petitioner's premises on March 29, 1968 was not the same trailer. Thus the allegation that a certain trailer had been sto-

len some six (6) months earlier bore no real relationship to the trailer the Petitioner was accused of concealing. The affidavit could have recited the theft of scores of trailer-trucks occurring over a period of time, with as much relevancy. Thus the "criminal activity" cited by the Court as supplementing the defective tip, is in itself defective, too remote and not relevant enough to form the basis for probable cause.

Secondly, the Court said, the Agent's own observation added substantial corroboration. The affidavit recited that the Agent personally went to the roadside of U. S. Highway No. 29, near the Ross property, and had viewed "freshly turned earth" of a size and shape ample to bury and conceal a van trailer of the type described thereinabove. This allegation is not evidence of criminal activity on the part of the Petitioner. Moreover, if the earth were "recently turned", this would make the preceding allegation about the theft in September even less relevant because of the long period of time involved. To approve such remote and irrelevant allegations as these to supply the necessary probable cause to support a search warrant, would seriously endanger "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures" as guaranteed by Amendment IV, United States Constitution. Law enforcement officers could contrive a multitude of such allegations in support of their suspicions against innocent citizens.

II

Who but someone who had participated in the crime could have possibly known that "a trailer loaded with Armstrong floor covering materials was buried on the premises" of the Petitioner? The implication is clear that the culprit who concealed the subject property, was the man in the best position to do so, the man who spent more time on the Petitioner's property from August, 1967 through December, 1967 than the Petitioner himself, the missing Ray Payne. He was there day and night, hiring his own labor, operating heavy equipment, excavating, no doubt, "freshly turned earth" over a sizable area of the Petitioner's property.

Considering all these circumstances there is a strong inference that the "confidential source" referred to in the affidavit, was one and the same as the missing Ray Payne. One is led irresistibly to the conclusion that Payne was no "mere informer", but rather one who perpetrated the criminal acts now charged against the Petitioner. It is noteworthy, for example, that the Agent knew exactly where to search. In a tract of forty-one (41) acres, he went directly to the spot where the trailer was buried. In fact he did not search the rest of the land. Obviously the "confidential source" knew exactly where the trailer was buried.

The F.B.I. Agents themselves confirmed the existence of Ray Payne, that he lived in a house trailer on the premises, that he had a North Carolina license plate on his automobile, and that he was known to the local "utility company". Yet no fingerprints were introduced into evidence, and, according to the Agents, none were found on any of the property in question, although admittedly all four of the participating Agents had received special fingerprint training. Agent Barry admitted that the F.B.I. made only a limited search for Ray Payne, not as extensive as other investigations have been. The Trial Judge himself stated, "there's no question in my mind that there was a Payne; that he operated along with that boy sitting back there just about like they said they operated, and there's no question he got himself involved and this fellow that he talks about may be the man that got him involved."

It is submitted that, in the fact of such a preponderance of evidence concerning Ray Payne's presence on the Petitioner's premises, considered in the light of the peculiar circumstances surrounding this case, that it was reversible error for the prosecution to avail itself of the information of its "confidential source", without bringing to light the identity and whereabouts of that confidential source, so that the Petitioner could avail himself of vital testimony and evidence which certainly would have been exculpatory to the Petitioner.

Although disclosure of the informer was not sought before or during the trial below, it is submitted that the fact of the nondisclosure is of such magnitude as to deprive the Petitioner

of a fair trial of the issues and therefore constitutes plain error, reviewable by this Court, under Rule 52(b), Federal Rules of Criminal Procedure.

III

Furthermore it is asserted that the Court committed error in failing to grant the Petitioner's motions for Judgment of Acquittal, Arrest of Judgment and New Trial. To sustain its burden of proof under Section 2315, Title 18, it was necessary for the Government to prove beyond a reasonable doubt all five of the elements which constitute the offense described therein: (1) that the subject property was stolen; (2) that the Defendant stored or concealed the subject property; (3) that the subject property was of the value of Five Thousand ($5,000.00) Dollars or more; (4) that the subject property is in interstate commerce; and (5) that the Defendant had guilty knowledge. Inasmuch as the Petitioner herein was charged with two violations of the said Section, it was necessary that the Government prove all the five elements as to each offense charged.

The Government did not prove that the property was stolen, only that it disappeared in transit.

There was no proof that the Petitioner stored or concealed the subject property, only proof that it was found buried on his forty-one (41) acre tract of land, and that accompanied by a strong inference that another person (Ray Payne) had buried it there.

As to the proof of the element of value of the property, there are several defects: the only evidence presented as to the value of the trailer was the testimony of the original owner, who testified that two trailers were purchased by his company in July of 1967 for a total purchase price of Twenty-Six Thousand Four Hundred Forty-Three and 86/100 ($26,443.86) Dollars, but there was no evidence presented as to the specific value of the missing trailer. The jury was left to guess whether the two trailers were of equal value, or whether the missing trailer might have been worth only one-tenth as much as the other trailer. Furthermore the evaluation established was that of September, 1967; whereas the indictment was laid in March of 1968, with no explanation whatsoever of what happened

to the property in the meantime. Thus the Petitioner was charged with the value of the property at the time of its disappearance, which is manifestly unfair to the Petitioner. The statute itself says "whoever — conceals — goods — of the value of Five Thousand ($5,000.00) Dollars or more —". This clearly means that the property the accused is charged with concealing must be of the value of Five Thousand ($5,000.00) Dollars or more at the time of the concealment. The indictment herein charged the Petitioner with commission of this crime on March 29, 1968. No evidence whatsoever was introduced as to the value of the subject property at that time.

It was established that the subject property was in interstate commerce when it disappeared in September, 1967, but there was no evidence to establish its interstate character at the time of its burial on the Petitioner's premises.

There is no direct evidence in the entire record to prove guilty knowledge on the part of the Petitioner. It is submitted that a careful consideration of the Government's case fails to elicit any testimony, taken in a light most favorable to the Government, which establishes guilty knowledge to the degree required. Nor was any deficiency in the Government's case supplied by any testimony presented in the Petitioner's defense. The Petitioner's story about Ray Payne was uncontroverted. The Government even helped prove that Ray Payne was there. Surely some notice should be taken of the location of the buried property. The site was easily visible from the busy highway, and not far from the entrance to the highway. It was some three to four hundred feet from the Petitioner's house. It is difficult to believe that the Petitioner would have buried contraband property four hundred feet from his house, in view of the highway, with forty-one (41) acres of uninhabited land around him. Equally puzzling is the unexplained lapse of time between the disappearance of the property from interstate commerce and its discovery on the Petitioner's premises. "Recently turned earth" would lead one to conclude that the trailer had been buried recently. This would cause one to wonder where the trailer was between the time of its disappearance and the time of its burial. It defies one's imagination to think that the Petitioner would have kept the trailer

on his premises for six (6) months and then decided to bury it.

The testimony of the Petitioner's wife corroborated his. The prosecution did not try to impeach the credibility of either. Nor was any past criminal record shown, nor any pattern of conduct which would suggest guilt. Rather, what is suggested is that the Petitioner was an innocent victim of the delicts of another. A careful consideration of the total circumstances and all the evidence presented leads to the conclusion that the Petitioner was innocent, and that the Government failed to carry its burden to prove his guilt beyond a reasonable doubt.

CONCLUSION

This Court should grant the Petition for a Writ of Certiorari for the following reasons:

1. The Trial Court and the Circuit Court committed error in holding sufficient the search warrant and its supporting affidavit and in denying the Petitioner's motion to suppress evidence seized by virtue thereof.

2. The Petitioner was denied due process of law by the prosecution's suppression of a witness whose testimony may have been exculpatory to the Petitioner, and the Circuit Court should have invoked Rule 52(b), Federal Rules of Criminal Procedure to correct this plain error.

3. There was not sufficient evidence to convict the Petitioner under 18 U. S. Code 2315.

This case involves a patently erroneous construction of an important criminal statute, and is a matter of first impression.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals for the Fourth Circuit

NO. 13,315

United States of America,

Appellee,

versus

Melvin Lee Ross

Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. J. Robert Martin, Jr., Chief District Judge.

(Argued November 3, 1969 Decided April 15, 1970

Before SOBELOFF and CRAVEN, Circuit Judges, and WIDENER, District Judge.

Joe Robert Hooper, Greenville, South Carolina, for Appellant; and Thomas P. Simpson, Assistant United States Attorney, (Joseph O. Rogers, Jr., United States Attorney, on brief) for Appellee.

WIDENER, District Judge:

The appellant, Melvin Lee Ross, was convicted by a jury on both counts of a two count indictment charging him with violation of 18 U.S.C. §2315, in that he concealed and stored goods of the value of $5,000.00 or more, which goods had been stolen from interstate commerce, knowing the same to have been stolen. The first count charged concealing and storing certain Armstrong floor tile, and the second count a forty-foot refrigerator trailer.

Appellant assigns error in three particulars: first, that the supporting affidavit for the search warrant was insufficient and that the district court should have granted his motion to suppress the flooring materials and trailer seized as a result of the search; second, that the prosecution suppressed a witness whose testimony might have been beneficial to the defense; and third, that his motions in arrest of judgment, of acquittal, and for a new trial were overruled. These latter three motions are in essence that the verdict was contrary to the law and the evidence and without evidence to support it.

On or about September 30, 1967, a truck trailer load of Armstrong floor covering materials worth $10,364.98 was stolen from interstate commerce in Spartanburg County, South Carolina. This came to the attention of FBI agent Barry on October 2, 1967, and he was furnished an inventory of the stolen material.

On March 28, 1968, Barry received a report of the stolen material, and on March 29, 1968, went before a U. S. Commissioner and obtained a search warrant.

The affidavit on which the search warrant was based is here set forth in full:

> "Before Jesse M. Ray, United States Commissioner, Greenville, South Carolina, the undersigned being duly sworn deposes and says:
>
> "1. That between on or about September 30, 1967, and October 1, 1967, a 1966 Strick Van, Serial No. 701A3, 1968 S. C. Vehicle License TRL 1185 containing cartons of Armstrong Floor Covering materials valued in excess of $5,000.00 was stolen from

Hearon Circle, Spartanburg County, South Carolina.

"2. That the above described van and its contents were en route from Lancaster, Pennsylvania to Asheville, North Carolina; that their presence at Hearon Circle, Spartanburg County, South Carolina, was for the purpose of changing the drivers thereof in interstate commerce from Pennsylvania to North Carolina as above described.

"3. That on or about March 28, 1968, a confidential source of known and proven reliability advised affiant as follows:

That a tractor trailer loaded with Armstrong Floor Covering materials was buried on the premises of Melvin L. Ross on the northern side of U. S. Highway No. 29, Route 2, Box 30, Duncan, Spartanburg County, South Carolina.

"4. That the aforesaid confidential source is known by affiant to be reliable for the following reasons:

(a) In the past this confidential source has furnished correct information to affiant concerning the theft by another of a motor vehicle which had been transported in interstate commerce thereafter.

(b) In the past this confidential source has furnished correct information concerning the theft by another of another trailer and its contents from interstate commerce.

(c) That affiant knows this confidential source to be in a position to determine the factuality of item (3) supra.

"5. That affiant on March 28, 1968, personally viewed the premises described in item (3) supra and from his vantage point in his vehicle on the roadbed of U. S. Highway No. 29 he viewed recently turned earth on said premises, of a size and shape ample to bury and conceal a van trailer of the type described in item (1) supra.

"That based upon the foregoing he has reason to believe that the van and its contents described in item (1) supra are buried or otherwise concealed on the premises described in item (3) supra, and therefore desires a search warrant for those premises.

RAYMOND P. BARRY, JR.
Special Agent
Federal Bureau of Investigation

"Sworn to before me, and subscribed in my presence, March 29, 1968.
(Seal)
JESSE M. RAY
United States Commissioner"

As a result of a search held March 29, 1968, pursuant to the warrant, the Armstrong floor covering was seized. Also seized was a forty-foot refrigerator trailer not mentioned in the warrant which was found buried on the Ross premises. The trailer had been stolen in Asheville, North Carolina, on or about August 28, 1967.

Ross laid off the blame for the whole affair to a certain Payne who had lived on the premises for sometime prior to the seach and who did not testify at the trial. Most of the Armstrong floor covering material was found in a buried trailer, but a small quantity was found in the Ross home located near the buried trailer. Also found on the premises near Ross' home were parts of two other stolen vehicles. The FBI first heard of Payne through Ross' attorney, and thereafter attempted without success to find him. Although we had understood during argument that a subpoena had been issued for Payne, the docket entries do not disclose this fact.

Appellant's principal contention is that the search warrant and its supporting affidavit are not sufficient for the U. S. Commissioner to have issued the warrant, and he relies principally on *Aquilar v. Texas*, 378 U. S. 108, 84 S. Ct. 1509; 12 L. Ed. (2d) 723 (1964) and *Spinelli v. United States*, 393 U. S. 410, 89 S. Ct. 584, 21 L. Ed. (2d) 637 (1969).

It is not contested by the government that the court should consider only the evidence presented to the Commissioner, *Melvin v. United States,* F. (2d) , (4th Cir. 1969), which in this case was the affidavit hereinabove set forth.

Aquilar, as construed by *Spinelli*, must furnish the guide for us here. In *Aquilar* the affidavit ". . . swore only that they had 'received reliable information and do believe' that narcotics were being illegally stored on the described premises." *Spinelli* at 412. The court in *Aquilar* found the affidavit inadequate for two reasons: first, the application failed to set forth any of the "underlying circumstances necessary" for an independent judgment of the magistrate; and second, the affiants did not "support their claim that their informer was 'credible' or his information 'reliable'." *Spinelli* at 413.

In *Spinelli* the affidavit was more complete than that considered in *Aquilar*, and contained the following: first, Spinelli's movements for four days, all of which were innocent enough viewed by themselves; second, two telephones in one apartment Spinelli was seen entering on one day; third, Spinelli had a reputation among law enforcement agents as a bookmaker; and fourth, a tip by a confidential, reliable informant that Spinelli was operating a handbook over the two telephones. *Spinelli* at 413, 414.

The court decided that the affidavit in *Spinelli* was inadequate because it did not state any reason to support the reliability of the informant, nor tell how the informant gathered his information, and failing in these respects the tip was not corroborated sufficiently for a finding of probable cause. *Spinelli* at 416, 418.

Turning to the affidavit at hand and employing the *Spinelli* approach we first examine the sufficiency of the informer's tip.

The affidavit states that "a confidential source of known and proven reliability," on March 28, 1968, advised affiant that a tractor trailer loaded with Armstrong floor covering was buried on the Ross property on U. S. Highway No. 29 in Spartanburg County. The affidavit then tells why the source was

reliable. The source had in the past provided affiant with correct information as to (1) the theft of a stolen motor vehicle transported in interstate commerce, and (2) the theft of another trailer and contents from interstate commerce.

"*Aquilar's* other test," as *Spinelli* called it, 393 U. S. at 416, however, is not met. The affidavit did not relate how the source received his information, and thus, if the affidavit rested on the tip alone we could not sustain the search.

However, the tip does not stand by itself. It is supplemented in two important respects which put to rest any doubt about the sufficiency of the entire affidavit. In the first place, the agent demonstrated detailed knowledge that a crime had actually been committed — providing the approximate date, place, serial number, license number and contents of the trailer. The fact that the trailer had been stolen was established beyond doubt, and clearly derived from an independent source. This contrasts with *Aquilar* and *Spinelli* in which the officers relied on informants not only for the identity of the culprit, but to indicate even the existence of criminal activity.

Secondly, there was the agent's own observation, which, unlike in *Spinelli*, added substantial corroboration. The affiant, FBI agent Barry, on March 28, 1968, personally went to the roadside of U. S. Highway No. 29, where the Ross property was located, and viewed freshly turned earth his informant had led him to expect. Moreover and most importantly, the fresh earth was not a plowed field but a plot roughly of a size to match the defendant's need for concealment of the stolen truck. This constitutes "corroboration in more than one small detail." 393 U. S. at 417.

In sum, there was more than a bald tip in this case. A trailer such as that described in the tip was known to have been stolen. The informant's allegation of where the trailer was hidden was significantly corroborated. There was more than enough content in the affidavit for the Commissioner to have satisfied himself that the story was not "fabricat[ed] *** out of whole cloth." 393 U. S. at 417. We conclude that the affidavit in question was sufficient; that the search warrant

was based upon probable cause; and that the evidence was properly admitted.

The finding here is consistent with *Melvin v. United States,* F. 2d (4th Cir. 1969). There the affiant could not state as a matter of fact that a crime had been committed; the affidavit provided no basis for the reliability of the informant; and their was insufficient corroboration.

Appellant next contends that the government suppressed a witness, Payne, whom Ross blames for his trouble. The first knowledge the government had of Payne was when Ross' attorney inquired of the FBI as to his whereabouts but upon casual inquiry was unable to locate him for the defendant. No issue was made of this in the record of the trial; no demand to produce Payne was made until this appeal; no supoena was issued to require his attendance; and no motion was made for a continuance because of his absence. No motion was made to disclose the identity of the FBI informant. The assignment of error we find to be without merit and not supported by the record.

The last contention of appellant is that Ross was without the necessary guilty knowledge that the property was stolen, and that the value of the trailer was not proved.

Not only were the trailer and the floor covering described in the indictment found secreted on Ross' property, two other stolen trailers were also found on the property at the time of the search, one buried and the other altered to conceal its identity. Part of the stolen floor covering was found in appellant's home.

It is uniformly held that the possession of recently stolen property justifies an inference that the possession was with the knowledge that the property was stolen. *Rugendorf v. United States,* 376 U. S. 528, 84 S. Ct. 825, 11 L. Ed. (2d) 887 (1964). Much longer periods than the six and seven months here involved have been held to support the inference. *United States v. Riso,* 405 F. (2d) 134 (7th Cir. 1968). We are of opinion that the evidence in the case justifies the inference that Ross knew the property was stolen.

The trailer in question was one of two identical trailers sold July 19, 1967, for the sum of $26,443.86. The invoice is in evidence, and to ascribe as much as $5,000.00 to the stolen trailer is a finding of fact within the province of the jury.

The facts are overwhelming that the trailer and flooring materials were stolen.

The verdict of the jury was fully justified by the evidence.

AFFIRMED.

APPENDIX B

AFFIDAVIT FOR SEARCH WARRANT PURSUANT TO T. 18 USC§ 659

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

United States of America
v.
Melvin L. Ross

Before Jesse M. Ray, United States Commissioner, Greenville, South Carolina, the undersigned being duly sworn deposes and says:

1. That between on or about September 30, 1967, and October 1, 1967, a 1966 Strick Van; Serial No. 701A3, 1968 S. C. Vehicle License TRL 1185 containing cartons of Armstrong Floor Covering materials valued in excess of $5,000.00 was stolen from Hearon Circle, Spartanburg County, South Carolina.

2. That the above described van and its contents were en route from Lancaster, Pennsylvania to Asheville, North Carolina; that their presence at Hearon Circle, Spartanburg County, South Carolina, was for the purpose of changing the drivers thereof in furtherance of the transportation thereof in interstate commerce from Pennsylvania to North Carolina as above described.

3. That on or about March 28, 1968, a confidential source of known and proven reliability advised affiant as follows:

That a tractor trailer loaded with Armstrong Floor Covering materials was buried on the premises of Melvin L. Ross on the northern side of U. S. Highway No. 29, Route 2, Box 30, Duncan, Spartanburg County, South Carolina.

4. That the aforesaid confidential source is known by affiant to be reliable for the following reasons:

(a) In the past this confidential source has furnished correct information to affiant concerning the theft by another of a motor vehicle which had been transported in interstate commerce thereafter.

(b) In the past this confidential source has furnished correct information concerning the theft by another of another trailer and its contents from interstate commerce.

(c) That affiant knows this confidential source to be in a position to determine the factuality of item (3) supra.

5. That affiant on March 28, 1968, personally viewed the premises described in item (3) supra and from his vantage point in his vehicle on the roadbed of U. S. Highway No. 29 he viewed recently turned earth on said premises, of a size and shape ample to bury and conceal a van trailer of the type described in item (1) supra.

That based upon the foregoing he has reason to believe that the van and its contents described in item (1) supra are buried or otherwise concealed on the premises described in item (3) supra, and therefore desires a search warrant for those premises.

RAYMOND P. BARRY, JR.
Special Agent
Federal Bureau of Investigation

Sworn to before me, and subscribed
in my presence, March 29, 1968.

JESSE M. RAY
United States Commissioner

[redacted]

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1578

MELVIN LEE ROSS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of South Carolina, petitioner was convicted on two counts of knowingly concealing merchandise worth more than $5,000 stolen from an interstate shipment in violation of 18 U.S.C. 2315. He was sentenced to imprisonment for six years on each count, the sentences to run concurrently. In an opinion affirming the conviction, on which we rely, the court of appeals fully discussed petitioner's con-

tentions that the affidavit supporting a search warrant was insufficient (Pet. 12-17), that the government should have produced one Payne (Pet. App. 17) and that the evidence was insufficient to support the verdict (Pet. App. 17-18).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1970.